



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,423	07/10/2001	Michael A. Lloyd	24717-707	8239
28960	7590	09/29/2006	EXAMINER	
HAVERSTOCK & OWENS LLP 162 NORTH WOLFE ROAD SUNNYVALE, CA 94086			NGUYEN, PHUOC H	
			ART UNIT	PAPER NUMBER
			2143	

DATE MAILED: 09/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/903,423

Applicant(s)

LLOYD ET AL.

Examiner

Phuoc H. Nguyen

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 14-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 14-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5/15/06 & 7/31/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This office action is in response to the applicants Amendment filed on July 10, 2006.
2. Claims 1-20 are pending in this application. Claims 1, 14, and 17 are independent claims. In Amendment, claims 9-13 and 18-20 are withdrawn, and claim 14 is amended. This Office Action is made non-final.

Response to Arguments

3. Applicant's arguments with respect to claims 1-8 and 14-17 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-8, and 14-17 are rejected under 35 U.S.C. 103(a) as being obvious over Robertson et al. (Hereafter, Robertson) U.S. Patent 6,973,490 in view of Burman et al. (Hereafter, Burman) U.S. Pub. No. 2001/0010059).

Re claim 1, Robertson discloses a method of measuring a performance of a route in an internetwork, the route coupling an internetwork server to a terminal on the internetwork (e.g. Figure 1 and col. 3 lines 61 through col. 4 lines 4), the method comprising: at a frequently trafficked portal on the internetwork, detecting a request for a web page from the terminal, wherein the web page is at least partially stored at the frequently trafficked portal (e.g. col. 3 lines 61 through col. 4 lines 4); in response to the request for the web page, downloading the web page to the terminal via the internetwork (e.g. col. 4 lines 43-55); from the web page, retrieving a Uniform Resource Locator (URL) for a web object referenced in the web page (e.g. col. 6 lines 6-14); resolving the URL to the internetwork server (e.g. col. 6 lines 8); However, Robertson fails to teach detecting a request for the web object from the terminal at the internetwork server, in response to the request for the web object, sending the web object from the internetwork server to the terminal and concurrent with sending the web object, measuring a Round Trip Time (RTT) from the transmission and reception of corresponding transport protocol packets sent between the internetwork server and the terminal.

Burman teaches detecting a request for the web object from the terminal at the internetwork server, in response to the request for the web object, sending the web object from the internetwork server to the terminal and concurrent with sending the web object, measuring a Round Trip Time (RTT) from the transmission and reception of corresponding transport protocol packets sent between the internetwork server and the terminal (e.g. pages 6-7 from paragraphs [0069] – [0070]).

It would have been obvious to one of the ordinary skill in the art at the time of the invention was made to incorporate Burman's teaching into Robertson's method to request the

Art Unit: 2143

web object and concurrently measuring the RTT between the internetwork server and the terminal through with the user's bandwidth can be determined in order to determine of what size or type of advertisement banner should be server to the user can be made, in whole or in part. Thus, determining the transfer time between a user's computer and a server or the user's bandwidth can be very important in effective on-line advertising as seen in page 2 paragraph [0013].

Re claim 2, Robertson further discloses the web page is at least partially encoded in a markup language (e.g. col. 4 lines 43-55).

Re claim 3, Robertson further discloses the markup language is Hyper Text Markup Language (e.g. col. 4 lines 43-55).

Re claim 4, Robertson further discloses the sending the web object from the internetwork server to the terminal is performed via a Hyper Text Transfer Protocol (HTTP) (e.g. col. 3 lines 45-54).

Re claim 5, Robertson further discloses the Hyper Text Transfer Protocol is HTTP v 1.0 (e.g. col. 9 lines 30-35).

Re claim 6, Robertson further discloses the Hyper Text Transfer Protocol is HTTP v 1.1 (e.g. col. 9 lines 30-35).

Re claim 7, Robertson further discloses the web object is visually imperceptible (e.g. hidden object or so small in size).

Re claim 8, Robertson further discloses the web object comprises a single pixel (e.g. inherently any web object must be at least a single pixel size).

Re claim 14, it has same limitations as cited in claim 1. Thus, claim 14 is also rejected under the same rationale as cited in the rejection of rejected claim 1.

Re claim 15, it has same limitations as cited in claim 2. Thus, claim 15 is also rejected under the same rationale as cited in the rejection of rejected claim 2.

Re claim 16, it has same limitations as cited in claim 3. Thus, claim 16 is also rejected under the same rationale as cited in the rejection of rejected claim 3.

Re claim 17, it is a method claim of claim 14. Thus, claim 17 is also rejected under the same rationale as cited in the rejection of rejected claim 14.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuoc H. Nguyen whose telephone number is 571-272-3919. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 09/903,423
Art Unit: 2143

Page 6

Phuoc H Nguyen
Examiner
Art Unit 2143

September 26, 2006

A handwritten signature in black ink, appearing to be 'Phuoc H Nguyen', written over a horizontal line.